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B. REILLY BARRY

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EXAMINER

MURDOUGH, JOSHUA A

ART UNIT

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NOTIFICATION DATE

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/159,503	Applicant(s) BARRY ET AL.	
	Examiner JOSHUA MURDOUGH	Art Unit 3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 97-102 and 104-120 is/are pending in the application.
- 4a) Of the above claim(s) 115 and 118-120 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 97-102, 104-114, 116 and 117 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgements

1. This action is responsive to Applicants' amendments received 23 December 2009.
2. This action has been assigned paper number 20100310 for reference purposes only.
3. Claims 97-102 and 104-120 are pending.
4. Claims 115 and 118-120 are withdrawn herein.
5. Claims 97-102, 104-114, 116, and 117 have been examined.

Election/Restrictions

6. On 11 September 2001, Applicants elected, with traverse, Species 1 – A, A system comprising protocol, at least one secure web server, at least one dispatch server, and a plurality of system resources. The Election/Restriction was made final on 4 December 2001. The Examiner acknowledges that claim 115 was previously present as a method. However, it has been the Examiner's position that, prior to the current amendment, claim 115 was not patentably distinct from the system of claim 97. However, with the current amendment, Applicants differentiated the method of claim 115 from the system of at least claim 97 by "enable[ing] the customer to manage routing of switched voice traffic and switched data traffic over the communications network" and "providing, to the customer...access to the network manager."
7. Moreover, prior to the current amendment, there was no significant burden on the Examiner to examine claim 115 as the references used to reject claims 97 and 110 were also used to reject claim 115. With the current amendments to claims 97, 110, and 115, separate searches would be required due to the above noted differentiation between the systems and the method.

8. Because the method of claim 115 is now patentably distinct from the previously elected system, and because the distinction would require an additional search burden on the Examiner, claims 115 and 118-120 are now considered to be directed to the non-elected Group II. Because claims 115 and 118-120 are directed to the non-elected Group II and because the Election/Restriction was made final on 4 December 2001, claims 115 and 118-120 are hereby withdrawn.

Specification

9. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

- a. “toll free voice networks” in at least claim 98;
- b. “priced call application” in at least claim 106.

Claim Objections

10. Claim 117 objected to because of the following informalities: it appears the word “the” was accidentally omitted from line 3 after “between” and before “toll.” Appropriate correction is required.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 116 and 117 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

c. Regarding claim 116:

These claim is indefinite because it is considered a hybrid claim. See MPEP §2173.05(p) II. In particular, the claim is directed to neither a “process” or a “machine” but rather embraces or overlaps two different statutory classes of invention as set forth in 35 U.S.C. §101.

For example, claim 116 recites “at least one dispatch server,” “customer computer,” and “the customer workstation.” In light of this evidence, one of ordinary skill in the art could reasonably interpret these recitations as express intent by Applicants to claim a machine claim. Alternatively, claim 116 recites “establishes a secure session between the network manager and the customer computer” and “establishes another secure session between the graphical user interface application and the customer workstation.” One of ordinary skill in the art could also reasonably interpret these recitations as express intent by Applicants to claim a process claim. In light of this conflicting evidence, a person of ordinary skill in the art could reasonably interpret claim 1 to be drawn to either a product or process.

Therefore in accordance with §2173.05(p) II which states that a single claim must be drawn to either a product or process (but not both) and because a potential competitor of Applicants would not know whether *possession alone* of the claimed structure constituted infringement, or alternatively, if infringement required the *execution* of the

recited method steps, the claims are indefinite. If Applicants overcome this particular 35 U.S.C. §112, 2nd paragraph rejection, the related 35 U.S.C. §101 rejection will also be withdrawn.

d. Regarding claim 117:

These claim is indefinite because it is considered a hybrid claim. See MPEP §2173.05(p) II. In particular, the claim is directed to neither a “process” or a “machine” but rather embraces or overlaps two different statutory classes of invention as set forth in 35 U.S.C. §101.

For example, claim 116 recites “at least one dispatch server,” “customer computer,” and “the customer workstation.” In light of this evidence, one of ordinary skill in the art could reasonably interpret these recitations as express intent by Applicants to claim a machine claim. Alternatively, claim 116 recites “establishes a secure session, between toll free network manager and the customer computer” and “establishes another secure session, between the real-time monitor and the customer workstation.” One of ordinary skill in the art could also reasonably interpret these recitations as express intent by Applicants to claim a process claim. In light of this conflicting evidence, a person of ordinary skill in the art could reasonably interpret claim 1 to be drawn to either a product or process.

Therefore in accordance with §2173.05(p) II which states that a single claim must be drawn to either a product or process (but not both) and because a potential competitor of Applicants would not know whether *possession alone* of the claimed structure constituted infringement, or alternatively, if infringement required the *execution* of the

recited method steps, the claims are indefinite. If Applicants overcome this particular 35 U.S.C. §112, 2nd paragraph rejection, the related 35 U.S.C. §101 rejection will also be withdrawn.

13. Claim 116 recites the limitation "the customer computer" in line 3. There is insufficient antecedent basis for this limitation in the claim. Claim 116 also recites "the customer workstation." There is no discussion of "a customer computer" prior to the above noted limitation. Because it could be intended as an additional component of the system set forth in 97 or it could be directed toward "the customer workstation" one of ordinary skill in the art would not understand the metes and bounds of this claim.

14. Claim 117 recites the limitation "the customer computer" in line 3. There is insufficient antecedent basis for this limitation in the claim. Claim 117 also recites "the customer workstation." There is no discussion of "a customer computer" prior to the above noted limitation. Because it could be intended as an additional component of the system set forth in 110 or it could be directed toward "the customer workstation" one of ordinary skill in the art would not understand the metes and bounds of this claim.

15. The Examiner finds that because particular claims are rejected as being indefinite under 35 U.S.C. §112 2nd paragraph, it is impossible to properly construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO's policy of trying to advance prosecution by providing art rejections even though these claim are indefinite, the claims are construed and the art is applied as much as practically possible.

Claim Rejections - 35 USC § 101

16. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

17. Claims 116 and 117 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

18. Claims 116 and 117 are rejected under 35 U.S.C. 101 because the claims are directed to neither a “process” nor a “machine” but rather embrace or overlap two different statutory classes of invention set forth in 35 U.S.C 101 which is drafted so as to set the statutory classes of invention in the alternative only. For examination purposes, the examiner will interpret these claims as directed to a system only.

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 97, 98, 100-102, 104-114, 116, and 117, as understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter (US 5,892,900) in view of Coley (US 5,751,914).

21. 97, 110, 116, and 117. (currently amended)

- e. An integrated and secure system for conducting business over a public Internet by enabling a customer, of a communications network, to command and control the customer's switched communications connections within the communications network and to view results of any changes in the customer's connections, the system comprising:
- f. at least one secure web server ("Secure Processing Unit (SPU)" **500**) that manages secure customer sessions with a customer workstation ("Electronic Appliance," **600**) over the public Internet (C 25, LL 22-27), the at least one secure web server providing session management for the customer, the session management including:
 - i. customer identification of the customer (C 25, LL 28-35),
 - ii. validation of the customer (C 226, LL 47-48),
 - iii. determining entitlements of the customer (C 2, LL 20-32) and
 - iv. performing encryption of the secure customer sessions (C 12, LL 31-37);and
- g. at least one dispatch server ("RPC manager" **550**, C 125, LL 7-60) that communicates with the at least one secure web server (Id.) and a plurality of system resources, where the at least one dispatch server provides verification of the customer's entitlements, and based on the customer's entitlements, forwards messages to a proxy ("RPC," Id.) associated with a desired service,
- h. where the plurality of system resources include:
 - v. a network manager ("network manager" **780**) which manages routing of the customer's traffic over the communications network (C 99, LL 11-21), and
 - vi. a graphical user interface application (C 324, LL 34-44)

22. Ginter does not expressly show:

- i. the graphical user interface application is to review, in real-time, network traffic associated with the customer, the network manager and the graphical user interface application being responsive to messages from the dispatch server, where the network manager and the graphical user interface application command and control circuit networks provided by the communications network to the customer.

23. However, Coley shows an event detection application **74** which monitors network traffic (C 8, LL 13-41). Coley further shows the controlling of network communications (CC 5-6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Ginter to include the detection of network traffic and control mechanisms as taught by Coley in the GUI user interface tools because controlling the network communications would be a method of controlling embedded content as the GUI of Ginter is intended (C 324, LL 34-44).

24. 98. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 97, where the circuit networks include toll free voice networks and the network manager includes a toll free network manager application, responsive to messages from the at least one dispatch server, to enable the customer to command and control routing of traffic on the toll free voice networks (Ginter discloses that the net (C 250, LL 21-41).

25. 100. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 97, where the network manager includes an outbound network manager, responsive to messages from the at least one dispatch server, to enable the customer to command and control priced calls (C 250, LL 21-41).

26. 101 and 113. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 97, where the graphical user interface application includes a reporter (“Meter” process,” **404**), responsive to messages from the at least one dispatch server~ to enable the customer to generate reports on voice communications in the communications network (C 58, LL 50-59).

27. 102. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 101, where the reporter includes an event monitor system to generate reports on network traffic in near real time (software does not execute when not on a computer or other device, therefore the system is inherent).

28. 104. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 101, where the reporter generates history reports on the voice communications occurring during selected periods of time (CC 154-155, LL 41-2).

29. 105. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 101, where the reporter includes a report manager

application to enable the customer to generate reports for a plurality of switched voice communication applications and an inbox system to communicate the reports to the customer (CC 303-304, LL 62-5).

30. 106. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 101, where the reporter includes a priced call application to enable the customer to generate priced reports and invoices for a plurality of voice communication applications (C 58, LL 50-59).

31. 107. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 97, where the graphical user interface application generates reports on data relating to data traffic on the communications network (C 58, LL 50-59).

32. 108. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 97, where the system includes an inbox system to store and forward reports, to the customer workstation, relating to voice and data traffic associated with the customer (CC 303-304, LL 62-5).

33. 109. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 97, where the system includes an event monitor system to

store and forward alarms generated with respect to traffic, associated with the customer, over the communications network (“Alarms,” Figure 14B).

34. 111. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 110, where the system further includes an order entry application that enables a customer to identify and authenticate a plurality of users with distinct toll free call manager entitlements, and to modify the toll free call manager entitlements from a single point of customer identification and authentication (C 125, LL 7-60).

35. 112. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 111, where the system further comprises-a priced call application responsive to messages from the dispatch server, to enable the customer to manage and pay for the communications network services provided by the communications network (C 8, LL 20-39).

36. 114. (currently amended) The integrated and secure system for conducting business over the public Internet as claimed in claim 110, where the system includes an online invoicing and electronic payment system (“clearinghouse,” C 3, LL 18-29) to manage and pay for selected calls over the public Internet in response to a request from the customer (Id.).

37. Claim 99 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter and Coley as applied to claim 97 above, and further in view of August (US 5,633,922).

38. The Ginter/Coley combination shows as discussed above in regards to claim 97.

39. The Ginter/Coley combination does not expressly show:

j. the switched circuit networks include call centers and the network manager includes a call manager application~ responsive to messages from the at least one dispatch server~ to enable the customer to command and control routing of voice traffic between the call centers.

40. However, August shows the monitoring of call traffic into call centers (C 1, LL 12-21).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the teachings of Ginter to include call centers in the network because a call center is a collection of phones and lines which August discloses are monitored (Id.) in a similar manner to the monitoring of the communications in the Ginter/Coley combination.

Double Patenting

41. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either ***anticipated by, or would have been obvious over***, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*

Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

42. A timely filed terminal disclaimer in compliance with 37 C.F.R. §§ 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

43. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 C.F.R. §3.73(b).

44. In each rejection below, claim 97 of the instant application has been set forth as a representative claim. Claim 97 is an independent claim. Claim 110 is also an independent claim which includes similar features to claim 97. See Applicants' 14 May 2009 Remarks, Page 33, Paragraph 1. Therefore, claim 110 is not considered patentably distinct from claim 97. Claims 98-102, 104-109, 111-114, 116, and 117 are dependent on either claim 97 or 110. As such, a patentably distinct independent claim would also result in patentably distinct dependent claims.

45. Unless otherwise noted, the differences between the claimed invention and the patented inventions are in the functional aspects or the patented invention contains additional elements not needed for anticipation. For example, claim 1 of the 6,381,644 patent contains additional

elements (*i.e.* application secure server) not needed to anticipate the instant claims. However, Applicants have used the term “comprising” in their current claims which allows for additional elements to be present in an anticipatory reference. Therefore, the instant claims would be anticipated by the patented inventions.

46. When differences are noted, the reason the differences are obvious are also noted.

47. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,381,644. The ‘644 patent contains, the Internet (“Internet”, claim 1), at least one secure web server (“at least one authentication secure server,” claim 1), at least one dispatch server (“a dispatch server,” claim 1), a network manager (“outbound network manager,” claim 1), and a graphical user interface application (on “network configuration device,” claim 1).

48. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,377,993. The ‘993 patent contains, the Internet (“Internet”, claim 1), at least one secure web server (“at least one secure server,” claim 1), at least one dispatch server (“dispatch server,” claim 1), a network manager (“firewall,” claim 1), and a graphical user interface application (on “report manager server,” claim 1).

49. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,385,644. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only substantive difference between the two sets of claims is in

relation to the type of communication supported (voice or data), which would be an obvious modification as the content of the communication is non-functional material.

50. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,470,386. The '386 patent contains, the Internet ("Internet", claim 1), at least one secure web server ("at least one secure server," claim 1), at least one dispatch server ("a device for generating statistical data," claim 1), a network manager ("customer," claim 8), and a graphical user interface application (on "a retrieval device," claim 1). In the '386 patent, the customer has to manually route the traffic. "[P]roviding an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art" (MPEP 2144.04 III).

51. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,490,620. The '620 patent contains, the Internet ("Internet", claim 1), at least one secure web server ("at least one secure server," claim 1), at least one dispatch server ("a device for receiving network information," claim 1), a network manager ("a device for periodically polling network switches," claim 1), and a graphical user interface application (on "integrated interface," claim 1).

52. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,574,661. The '661 patent contains, the Internet ("Internet", claim 1), at least one secure web server ("at least one secure server," claim 1), at least one dispatch server ("a network

configuration system,” claim 1), a network manager (“a network manager,” claim 1), and a graphical user interface application (on “integrated interface,” claim 1).

53. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,598,167. The ‘167 patent contains, the Internet (“Internet”, claim 1), at least one secure web server (“at least one secure web server,” claim 1), at least one dispatch server (“at least one dispatcher server,” claim 1), a network manager (“system resources providing communications network management,” claim 1), and a graphical user interface application (on “integrated interface,” claim 1).

54. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6,606,708. The ‘708 patent contains, the Internet (“Internet”, claim 1), at least one secure web server (“at least one secure server,” claim 1), at least one dispatch server (“at least one dispatcher server,” claim 1), a network manager (“system resources providing communications network management,” claim 1), and a graphical user interface application (on “system resources...generate client data,” claim 1).

55. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-73 of U.S. Patent No. 6,611,498. The ‘498 patent contains, the Internet (“Internet”, claim 68), at least one secure web server (“a secure server,” claim 68), at least one dispatch server (“configuring device,” claim 68), a network manager (“configuring device,” claim 1), and a graphical user interface application (on “configuring device,” claim 68). The ‘498 patent provides the same functionalities as

claimed in the instant application. However, several of the functions are performed by the same “configuring device.” However, MPEP 2144.04 V C. states that, “if it were considered desirable for any reason to [make two parts separable], it would be obvious to make the [two parts separable] for that purpose.”

56. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,745,229. The ‘229 patent contains, the Internet (“Internet”, claim 1), at least one secure web server (“at least one secure server,” claim 1), at least one dispatch server (“an invoice server device,” claim 1), a network manager (“an invoice presentation device,” claim 1), and a graphical user interface application (on “presentation applet,” claim 1).

57. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,763,376. The ‘376 patent contains, the Internet (“Internet”, claim 1), at least one secure web server (“at least one web server,” claim 1), at least one dispatch server (“at least one dispatch server,” claim 1), a network manager (“system resources providing communications network management,” claim 1), and a graphical user interface application (on “system resources...generate client data,” claim 1).

58. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,968,571. The ‘571 patent contains, the Internet (“Internet”, claim 1), at least one secure web server (“at least one secure web server,” claim 1), at least one dispatch server (“at least one dispatcher server,” claim 1), a network manager (“system resources providing communications

network management,” claim 1), and a graphical user interface application (on “system resources...generate client data,” claim 1).

59. Claims 97-102, 104-114, 116, and 117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 7,058,600. The ‘600 patent contains, the Internet (“Internet”, claim 1), at least one secure web server (“at least one secure server,” claim 1), at least one dispatch server (“at least one dispatch server,” claim 1), a network manager (“system resources providing communications network management,” claim 1), and a graphical user interface application (on “system resources...generate client data,” claim 1).

Claim Interpretation

60. The Examiner respectfully reminds Applicants that: “A system is an apparatus.” *Ex parte Fressola* 27 USPQ2d 1608, 1611 (B.P.A.I. 1993)(citations omitted). Therefore, claims 97-102, 104-114, 116, and 117 are understood to be apparatus claims. As such, they are subject to interpretation as outlined by MPEP § 2114, wherein it says, “While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function” and “[A]pparatus claims cover what a device is, not what a device does.” While the Examiner may have cited references for the functional limitations that do not require an alteration of the structure for purposes of compact prosecution, it is his principal position that these elements do not need to be shown in order to show anticipation. It is suggested that the claims be amended to clearly show the structural elements to prevent issues associated with this type of interpretation.

61. Because the Examiner is comparing system claims in the double patenting rejections, the same interpretation is used. Because a system must be distinguished on structure not function for anticipation, the Examiner's position is that the structures of the system claims need to be the same or obvious variants in order for a double patenting rejection to be proper.

62. For example, in claim 97, the limitations "manages secure customer sessions with a customer workstation over the public Internet" and "providing session management for the customer" are directed towards the function of the system and do not impart any structural limitations. The recited structural limitations of claim 97 are: "at least one secure web server," "at least one dispatch server," and "a plurality of system resources" which include "a network manager" and a "graphical user interface."

63. Additionally, it is the Examiner's understanding that data and voice (including toll free and toll/priced) are transmitted over the same network. If Applicants can provide evidence that data and voice require structurally different networks, this may help to overcome the prior art rejections above.

Response to Arguments

64. Applicant's arguments filed 23 December 2009 have been fully considered but they are not persuasive.

65. Applicants argue:

66. "Applicants respectfully request that the Examiner make clear (a) the differences between the inventions defined by the conflicting claims, by comparing each claim in the present application to a claim in U.S. Patent No. 6,381,644; and (b) the reasons why a person of ordinary

skill in the art would conclude that the invention defined in the claim at issue would have been an obvious variation of the invention defined in the claim of U.S. Patent No. 6,381,644, as set forth in M.P.E.P § 804” (Remarks, Page 21, Paragraph 1).

67. Examiner's response:

68. First, the Examiner notes that “[a] nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is *either anticipated by, or would have been obvious over*, the reference claim(s)” (MPEP § 804 II.(B.)(1.)). It is the Examiner’s position that when the reference claims contain the structure required by the instant claims, the instant claims are *anticipated* by the reference claims.

69. Second, MPEP § 804 II. (B.)(1.) states:

Any obviousness-type double patenting rejection should make clear:

- (A) The differences between the inventions defined by the conflicting claims — a claim in the patent compared to a claim in the application; and
- (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue >is anticipated by, or< would have been an obvious variation of >,< the invention defined in a claim in the patent.

70. The Examiner has noted that the claims of the ‘644 patent contain additional elements.

The additional elements are the differences. The Examiner has also noted these additional elements are not needed to *anticipate*. Additionally, claim 97 uses the word “comprising” which

allows for there to be additional elements in an anticipatory reference. Therefore, the reason the reference claim anticipates is because at least all of the structural elements of claim 97 are shown.

71. Applicants repeat this argument for each of the double patenting rejections. For the rejections where the structure of the reference is not sufficient to anticipate, the Examiner has noted the difference and provided a reason the modification to the reference to make it read on claim 97 would be obvious.

72. Applicant's arguments with respect to claims 97-102, 104-114, 116, and 117 have been considered but are moot in view of the new ground(s) of rejection.

73. Applicants argue:

74. “[A]ccording to 35 U.S.C. § 103(c), ARCHER is not citable against the present application in a rejection under 35 U.S.C. § 103(a). Applicants, therefore, respectfully request that the Examiner reconsider and withdraw the rejection of pending claims 97- 115 under 35 U.S.C. § 103(a) based on ARCHER and MCNAIR" (Remarks, Page 16, Paragraph 2).

75. Examiner's response:

76. Because Applicants stated that Archer and the instant Application were commonly owned at the time of invention, the Archer reference has been removed.

Conclusion

77. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

78. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

79. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA MURDOUGH whose telephone number is (571)270-3270. The Examiner can normally be reached on Monday - Thursday, 7:00 a.m. - 5:00 p.m.

80. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

81. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joshua Murdough
Examiner, Art Unit 3621

/EVENS J. AUGUSTIN/
Primary Examiner, Art Unit 3621